



## CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 2, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0249

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Unfounded (Expedited)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Unfounded (Expedited)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

The Complainant alleged Named Employee #1 (NE#1) and Named Employee #2 (NE#2) used excessive force in assaulting him while taking him into custody.

### **ADMINISTRATIVE NOTE:**

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the involved employees. As such, OPA did not interview the involved employees in this case.

On July 10, 2023, the Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.

### **SUMMARY OF INVESTIGATION:**

NE#1 and NE#2 were dispatched to investigate an alleged arson and assault. The dispatch indicated an unknown male sprayed lighter fluid on a vehicle and tried to set it on fire, tried to squirt fluid on the victim and attacked the victim. Upon arrival, NE#1 and NE#2 located the Complainant who reasonably matched the description of the call near the location of the incident. Another SPD Officer, Witness Officer #1 (WO#1) responded to the scene. NE#1 was the primary officer and NE#2 was the secondary officer. NE#1 briefly detained the Complainant, identified him and asked him if he had any weapons. The Complainant explained he had a pocket knife on him in his jean pocket. NE#1 explained to the Complainant he was being detained due to an alleged arson and assault. A subsequent field show up with the Complainant was done and the victims confirmed the Complainant was not the suspect. NE#1 learned the Complainant had two outstanding warrants and NE#2 went to verify them with dispatch. NE#1 talked to the



Complainant regarding his recent activities and location and he became agitated. NE#1 then instructed the Complainant to turn around and put his hands behind his back. The Complainant complied and NE#1 took control of his left wrist while Witness Officer #1 (WO#1) stated, "Why don't you go ahead and tell this officer [NE#1] your name, I'm going to get your fingerprints just to verify who you are." WO#1 attempted to scan the Complainant's fingerprints and had to scan them again, as WO#1 had difficulty locating records of his fingerprints. WO#1 cleaned the Complainant's fingers and rescanned his fingerprints. The Complainant told NE#1, "You guys are starting to piss me off now." In addition, the Complainant tells NE#1, "I know it will be all right. You won't be. Now get these handcuffs off me." Furthermore, he states, "I didn't assault nobody. I'm being assaulted right now." NE#1 told the Complainant, "You're not being assaulted." WO#1 told the Complainant, "Come on. Be realistic. You're not being assaulted and you know it." The Complainant replied, "Watch what happens". NE#1 allowed the Complainant to sit at the bus shelter while waiting for the warrant results while handcuffed. NE#2 verified the warrants for the Complainant and NE#1 informed the Complainant of this and stated he was being placed under arrest for this. The Complainant told NE#1, NE#2 and WO#1 he was aware of this. The Complainant was cooperative during the arrest and the search incident to arrest. The Complainant was read his Miranda warnings upon being arrested. NE#1 and Witness Officer #1 (WO#1) escorted the Complainant to a patrol car by each holding one of the Complainant's arms. The Complainant was placed in the back of a patrol vehicle.

Witness Officer #2 (WO#2), a SPD Sergeant, screened the arrest for the Complainant. During the screening of the arrest, NE#1 informed WO#2 that the Complainant alleged NE#1 and NE#2 assaulted him. WO#2 talked to the Complainant and asked him about the assault allegation. The Complainant stated, "Well yea. I'm being assault right now." When asked by WO#2 how he was being assaulted he replied, "(inaudible) I'm in the back of the car, (inaudible) somewhere I don't want to go." The Complainant was taken to the precinct. WO#2 and NE#2 talked to NE#1 and told him that allegations of this nature need to be reported as soon as possible so that a Sergeant can respond to the scene to screen the allegation. NE#2 documented this training in NE#1's FTO Dailey Observation Report.

*a. Body-Worn Video (BWV)*

WO#2 reviewed the BWV for NE#1, NE#2 and WO#1 and did not see any evidence of an assault by NE#1 or NE#2 or force at any time. WO#2 wrote the evidence clearly showed no assault occurred. WO#2 sought an unsubstantiated misconduct screening for the original assault call.<sup>1</sup>

*b. Complainant Contact for Interview*

OPA staff mailed the Complainant a contact letter to his only known contact point by mail. A contact letter was mailed to him but no response was received. The OPA Investigator also checked the G.O. report, Mark 43 records, the King County Jail records and a previous address that he was no longer at.

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<sup>1</sup> 2023-138093.



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**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

***8.200 - Using Force (1) Use of Force: When Authorized***

The Complainant alleged that NE#1 used excessive force and assaulted the Complainant.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” SPD Policy 8.050. Reasonableness must allow for the fact that officers are often forced to make “split-second decisions” in tense, dynamic circumstances. *Id.* The policy also lists a number of factors that should be weighed when evaluating reasonableness. *See id.* Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” *Id.* Lastly, the force used must be proportional to the threat posed to the officer. *Id.*

In review of the BWV of NE#1, NE#2 and WO#1, it did not show the Complainant was assaulted by NE#1 or NE#2. In addition, it showed that no Type I, II, or III force was used on the Complainant. Therefore, based on the evidence provided, in review by a preponderance of the evidence, the Complainant was not assaulted by NE#1 or NE#2, nor was excessive force used on the Complainant.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

**Named Employee #2 - Allegation #1**

***8.200 - Using Force (1) Use of Force: When Authorized***

The Complainant alleged that NE#2 used excessive force and assaulted the Complainant.

Accordingly, for the same reasons above at NE#1, OPA recommends this allegation for NE#2, be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**